

Claim Rejections Under 35 USC §103

The 01/28/03 Office Action indicates that the rejection of claims 1-101 under 35 USC 103(a) based on the reference WO 99/05084 are withdrawn (presumably in view of Applicant's remarks filed in the paper of 15 NOV 2002).

The 01/28/03 Office Action indicates that the rejection of claims 1-101 under 35 USC § 103(a) based on the Loh et al (5,193,618) reference has been re-instated in the 01/28/03 Office Action. Applicants note that previously, a rejection of claims 1-101 under 35 USC § 103(a) based on the Loh et al (5,193,618) reference was set forth in the Office Action dated 5/23/2002, but that this rejection of claims 1-101 was indicated as being overcome by Applicants' remarks set forth in their Response which was mailed on August 8, 2002.

Applicants are puzzled at the withdrawal of the rejection based on Loh et al. in the Office Action dated 11/05/02, and its subsequent re-assertion in the last Office Action dated 01/28/03, but do nevertheless respect this action. Applicants do not fully appreciate the statements on page 4 under section 4, in the 01/28/03 Office Action relative to why applicants would be prevented from presenting claims corresponding to those of the instant application in the co-pending application 09/559,841. However, Applicants respectfully assert their desire to exercise their lawful right to pursue the instant application as a Continuation-In-Part, for reasons detailed in their 15 NOV 2002 submission to the Office in this case. Nevertheless, Applicants are grateful for the Examiner's statement on page 4 of the 01/28/03 Office Action that it is the Examiner's opinion that the claims of co-pending case 09/559,841 cover "alkyl aromatics." In the event that all claims in the instant case are ever indicated as being allowable, Applicants shall

at such time promptly file a proper Terminal Disclaimer to obviate the provisional double-patenting rejection.

Applicants respectfully assert that the instant invention, as defined by claims 1-101 is not obvious in view of the Loh et al. reference for the reasons stated in Applicant's response dated 8/8/02, which reasons are fully incorporated herein by reference thereto; the Examiner is respectfully requested to review those reasons.

Further, claims 1-101 are not obvious in view of the prior art when taken as a whole for the following reasons, additional than those specified in Applicant's response dated 8/8/02.

First, it is noticed that the Office Action dated 1/28/03 indicates on page 3 that:

"Applicant has argued that Loh et al. do not mention the 2-phenyl isomer content. The examiner contends that this limitation would have been obvious in the absence of unexpected results."

While it is undoubtedly true that many applicants for patent derive some benefit from having unexpected results present in their inventions, which can in some cases render their inventions non-obvious, the present case is slightly different. The reason for this is that the prior art teaches the opposite of what Applicant is claiming. Specifically, references 3,342,888; 3,387,056; and 3,509,225 (all cited as prior art in the present case in an IDS signed by the undersigned Agent on January 2, 2000) all teach that higher amounts of 2-phenyl isomer in a linear alkylbenzene sulfonate is undesirable. (US 3,342,888, col. 2, lines 39-41; US 3,387,056, col. 2, lines 21-24; US 3,509,225, col. 1, lines 59-62 et seq.).

Therefore, the assertion in the 01/28/03 Office Action that: "the examiner contends that this limitation would have been obvious in the absence of unexpected results" in reference to the

2-phenyl content is not supported by the prior art, which teaches that less 2-phenyl is desirable, at the passages annotated in the preceding paragraph. It is true that Loh et al. does not mention 2-phenyl content. Therefore, the key question arises as to where the motivation exists in the prior art for modifying the teachings of the Loh et al. reference to arrive at Applicants' claimed invention. Since Loh et al does not mention 2-phenyl content, then the concept of modifying the 2-phenyl content must be imported from some teaching somewhere in the prior art relative to 2-phenyl isomer. Interestingly, the Office Actions in this case have thus far blatantly ignored the teachings of the prior art of record relative to the 2-phenyl isomer content. Selectively ignoring the prior art of record which addresses the subject is detrimental to the interests of Applicant, and Applicants believe this is unfair, and respectfully request that the Examiner review the teachings in US 3,342,888 at col. 2, lines 39-41; US 3,387,056, col. 2, lines 21-24; and US 3,509,225, col. 1, lines 59-62 et seq., and then reconsider the rejection of instant claims 1-101 based on the teachings of Loh et al. Applicants believe that the prior art of record clearly teaches one of ordinary skill that higher levels of 2-isomer content are not desirable, and therefore one of ordinary skill would not be led to the instantly-claimed invention.

Applicants, in the face of prior art which clearly leads one of ordinary skill in the wrong direction and away from Applicant's claimed compositions, went on to discover that higher amounts of 2-phenyl isomer in some systems indeed provided benefits of increased detergency, increased performance in the presence of water hardness, and the ability to formulate without the need of builders owing to the fact that the salts of these materials are solids at room temperature, unlike salts of linear alkyl benzenes previously available. Applicants believe that since the prior art teaches away from their claimed inventions, that a *prima facie* case of obviousness does not

exist respecting claims 1-101, and these claims should be allowable.

With regards to the making of a *prima facie* case of obviousness under 35 USC §103(a), Applicant notes that MPEP section 706.02(j) sets forth the three basic criteria which must be met:

- "1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2) there must be reasonable expectation of success; and
- 3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based upon applicant's disclosure."

With respect to claims 1-101, Applicants respectfully submit that # 1) in the above is not present in these claims because of prior art patents 3,342,888; 3,387,056; and 3,509,225 each which clearly teach that higher levels of 2-phenyl isomer content is undesirable. Therefore, on this basis alone these claims should be passed to issue.

In view of US patents 3,342,888; 3,387,056; and 3,509,225 each which clearly teach that higher levels of 2-phenyl isomer content is undesirable, it is questionable as to whether # 2) above is present, i.e., a reasonable chance of success. Success at providing a surfactant maybe, but success for providing an improved surfactant and a formulation containing an improved linear alkyl benzene sulfonate surfactant ? The prior art teaches that increasing 2-phenyl content is undesirable. Where is the motivation relied upon by the Office Action for going against the teachings of three prior art references ? The only document of record which teaches or even remotely suggests Applicant's claimed combinations is Applicant's specification.

Finally, even though the above is believed by Applicants more than sufficient to show that a prima facie case of obviousness for instant claims 1-101 is not present in this matter, it is further noted that no combination of prior art references arrives at Applicant's claims. Thus, # 3) above is not satisfied either.

Applicants respectively assert claims 1-101 are not obvious in view of the Loh et al. reference for the reasons given herein with respect to the teachings of three prior art references of record, either alone, or in combination with the contents of Applicants' response of 8/8/02 concerning the same rejection.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher J. Whewell", with a large, sweeping flourish at the end.

Christopher J. Whewell, Reg. No. 37,469